Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AWS") hereby submits its reply comments in response to the Commission's *Second Further Notice* issued in the above-captioned proceeding.[1/]

[1/] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171; *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571; *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72; *Number Resource Optimization*, CC Docket No. 99-200; *Telephone Number Portability*, CC Docket No. 95-116: *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24592 (rel. Dec. 13, 2003) ("*USF Assessments Order*" or "*Second Further Notice*").

I. THE COMMISSION SHOULD RETAIN A REVENUE-BASED ASSESSMENT MECHANISM

Many commenters, including incumbent local exchange carriers ("ILECs"), wireless providers, and consumer groups, agree with AWS that the Commission should not adopt any of the three proposals discussed in the *Second Further Notice* for assessing universal service contributions based on the number or capacity of the "connections" a carrier provides to the public switched network.[2/] These commenters correctly argue that, unlike the current revenue-based universal service contribution mechanism, a connection-based assessment would violate Section 254(b)'s non-discrimination requirements and would unlawfully assess wireless carriers' intrastate services in contravention of Section 2(b) and the Fifth Circuit Court of Appeals' decision in *TOPUC*.[3/] In addition, because the costs associated with a wholesale revision of the regime are likely to be significant, a number of parties urge the Commission to allow the measures adopted in the *Interim Order* to work and to ensure that all consequences are carefully considered before changing the process.[4/]

The record plainly demonstrates that none of the three connection-based proposals would satisfy Section 254(b)'s directive that universal service contributions be assessed in non-discriminatory manner. Consumers Union *et al.*, for example, point out that using telephone numbers to determine connections, as Proposal No. 3 suggests, would unfairly shift the contribution burden from carriers with the most amount of interstate usage – interexchange

---

[2/] Because AWS does not believe there is a legal or policy basis for adopting a connection-based assessment mechanism, it does not comment specifically on the Staff Study analyzing three connection-based proposals. Nevertheless, as discussed herein, to the extent the Commission decides to establish such a regime, it must ensure that it takes into account, and excludes from the contribution base, intrastate usage on wireless networks. *See* Public Notice, *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD file No. L-00-72 (rel. Feb. 26, 2003).

[3/] *See Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 447 (5th Cir. 1999) ("*TOPUC*"); Allied National Paging Association Comments at 7-9; TracFone Comments at 24-25; Verizon Comments at 11; Verizon Wireless Comments at 7; Western Alliance Comments at 12.

providers – to local exchange and wireless carriers.[5/] Verizon Wireless similarly explains that the flat monthly fee aspect of Proposal No. 1 is fatally imprecise and that all three variants of Proposal No. 2 would unlawfully require CMRS carriers to shoulder a disproportionate share of the burden.[6/] Indeed, as Verizon Wireless notes, notwithstanding the Commission's long-standing recognition that CMRS is unified service, the second proposal "would divide the wireless connection into "access" and "transport" components and assess CMRS carriers with at least two (and potentially more) contribution unit obligations for each wireless handset."[7/] Each of the connection-based proposals represents an attempt by a particular industry segment to shed itself of the obligation to pay into the universal service fund in proportion to the amount of interstate telecommunications traffic it carries. All three of the proposals should therefore be rejected in favor of maintaining the current revenue-based system.

For similar reasons, the connection-based proposals would be inconsistent with Section 254(d)'s mandate that universal service contributions come from every telecommunications carrier that provides interstate telecommunications service and instead would assess against the intrastate services of CMRS carriers in violation of Section 2(b).[8/] As the Fifth Circuit made clear, Section 2(b) denies the Commission "jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service."[9/] There is no escaping Section 2(b)'s restrictions simply through adoption of a connection-based assessment. Just as "the inclusion of intrastate revenues in the calculation of universal service contributions easily constitutes a 'charge . . . in connection with

---

4/ CTIA Comments at 2-3; National Telecommunications Cooperative Association Comments at 2; Nextel Comments at 21; TracFone Comments at 6; Verizon Wireless Comments at 2-3.

5/ Consumers Union et al. Comments at 13-14.

6/ Verizon Wireless Comments at 7-22.

7/ *Id.* at 14.

8/ Verizon Comments at 11.

intrastate communication service,'" an assessment based on connections is a "*charge*" and, to the extent the services provided over those connections are intrastate, the charge is "*in connection with intrastate communication service*."[10/]

Nor is there any basis for the Commission's theory that using telephone numbers as a proxy for connections would alleviate the legal infirmities of such proposals.[11/] As Verizon Wireless states, Section 251(e)'s grant of exclusive jurisdiction over numbering administration is entirely irrelevant to the Commission's activities with regard to universal service assessments.[12/] "Section 251(e) has no bearing on, nor does it supercede, the bar that Section 2(b) imposes on any attempt to assess intrastate service."[13/]

Finally, a variety of consumer groups and small telephone companies contend that a connection-based mechanism would be harmful to low-volume users and low-income households because it would require such consumers to subsidize the universal service fees of callers that make the most use of the telecommunications networks.[14/] Considering that the primary goal of the proposed revamping of the universal service system is to benefit telephone consumers, the Commission should not take actions that would have exactly the opposite effect. Rather, these commenters ask the Commission to give the recent changes to the revenue-based

---

9/ *TOPUC*, 183 F.3d at 447.

10/ *Id.*

11/ *Second Further Notice* ¶ 96.

12/ Verizon Wireless Comments at 21.

13/ Verizon Wireless Comments at 20. Verizon Wireless also correctly explains that the decision of the Second Circuit Court of Appeals in *NYPSC v. FCC* does not rescue a number-based universal service system from application of Sections 254 and 2(b). Verizon Wireless Comments at 20 (citing *People of the State of New York & Public Service Commission of the State of New York v. Federal Communications Commission*, 267 F.3d 91 (2nd Cir. 2001)). In that case, the relevant Commission action was taken in furtherance of its numbering authority, not universal service.

14/ *See, e.g.,* Community Action Partnership Comments at 2; Consumers Union, et al. Comments at 7-10; National Indian Education Association Comments at 2.

mechanism a chance to work before engaging in a wholesale overhaul of the universal service system.[15/]

II. ANY REQUIREMENTS ADOPTED IN CONNECTION WITH COMPANY-SPECIFIC TRAFFIC STUDIES SHOULD NOT UNDULY BURDEN WIRELESS CARRIERS

In the *USF Assessments Order*, the Commission acknowledges that it established a wireless interstate revenue safe harbor "at the high end of the range of estimates provided by the wireless studies to provide mobile wireless providers an incentive to report their actual interstate telecommunications revenues if they are able to do so."[16/] Although most CMRS carriers would prefer the administrative ease associated with using a safe harbor, it is likely that the new 28.5 percent threshold will have exactly the result desired by the Commission. Accordingly, AWS urges the Commission not to add to the already high cost of determining interstate usage on a company-by-company basis by adopting onerous regulatory requirements for the preparation of traffic studies.

AWS agrees with Nextel that any guidance provided on assumptions and proxies should be as flexible as possible. For example, although Verizon Wireless' proposal to use originating cell sites and terminating NPA-NXXs may be acceptable for Verizon Wireless' own purposes, many other CMRS carriers lack ready access to the data necessary to comply with that methodology.[17/] Indeed, the call data and translation programs that would be required for AWS to determine cell site trunk routes and rate center NPA-NXXs on its network would be so extensive that it is unclear whether a study under such terms could actually be completed or whether it would be sufficiently reliable in the end. Nextel similarly notes that any mechanism

---

[15/] Fred Williamson, et al. at 7; Montana Independent Telecommunications Systems at 5-7; National Telecommunications Cooperative Association at 2.

[16/] *USF Assessments Order* ¶ *22.*

[17/] *See* Letter from L. Charles Keller, Wilkinson Barker Knauer, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (Oct. 28, 2002).

that would require it to use the originating cell site of call would require a massive billing system overhaul.[18/]

Likewise, AT&T Corp.'s detailed proposals for traffic study preparations, including, requiring wireless carriers to determine the average percentage of interstate usage throughout the year, not just on a particular day; to specify the base against which that percentage of interstate usage is to be determined; to project those percentages for the coming year, rather than simply relying on historical data; and to file traffic studies with the Commission and subject them to public challenge would raise the costs of compliance with the universal service mandate to unacceptable levels.[19/] Because such costs ultimately will be passed on to consumers in the form of higher wireless service rates and less robust services, excessive mandates like those suggested by AT&T Corp. violate Congress' directive that "[q]uality services should be available at just, reasonable, and affordable rates."[20/]

Although it is important that the Commission provide sufficient guidance on the methodology for company-specific traffic studies to ensure that wireless carriers use reasonably comparable assumptions and definitions, sufficient flexibility is necessary to accommodate the differences among various wireless providers and between wireless and wireline carriers. As Nextel emphasizes, CMRS carriers should be permitted to use data that is already generated by their systems –"*USF assessment methodologies should never require carriers operating in competitive markets to transform the way they do business.*"[21/]

[18/] Nextel Comments at 26-27.

[19/] AT&T Comments at 22; *see also* AT&T Petition for Reconsideration (filed March 13, 2003) of Order and Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. Jan. 30, 2003).

[20/] 47 U.S.C. § 254(b).

[21/] Nextel Comments at 25 (emphasis in original). AWS' database systems currently summarize its system minutes of use by categories of calls and, with that data, AWS can make reasonably accurate estimates of the level of interstate traffic carried on its network.

CONCLUSION

For the foregoing reasons, the Commission should retain its revenue-based assessment regime for universal service contributions, and should adopt flexible guidelines for the preparation of wireless carrier-specific traffic studies.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

/s/ Douglas I. Brandon

Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

Howard J. Symons
Sara F. Leibman
Bryan T. Bookhard
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

April 18, 2003